

UNITED NATIONS



NATIONS UNIES

OFFICE OF INTERNAL OVERSIGHT SERVICES  
INTERNAL AUDIT DIVISION

Ref No. AUD-7-7:7 (1129/02)

(1839/02) back log

15 November 2002

Assignment No. AF2002/27/5

To: Mr. Rolf G. Knutsson, Executive Secretary  
United Nations Compensation Commission,

From: Dagfinn Knutsen, Chief,  
Iraq Programme & Pension Audit Section

Subject: OIOS Audit of UNCC – E/F Claims: 4<sup>th</sup> Installment Report

The recommendations set out below are submitted for your consideration. Please comment on them and where appropriate, specify the corrective action taken or provide a planned implementation schedule. When commenting please refer to the Assignment No. listed above and to the recommendation number in parenthesis in order to facilitate monitoring of its status (timely response, acceptance, implementation). Please reply by 22 November 2002.

*Audit Observations and Recommendations*

1. The UNCC Secretariat provided a copy of the Report and Recommendations made by the Panel of Commissioners concerning the fourth instalment of "E/F" claims<sup>1</sup> to OIOS for review. The OIOS conducted the review during October and November 2002. The Report covers 15 claims for losses totalling US\$382.7 million. The Governing Council is scheduled to consider the report in its meeting to be held in December 2002.
2. We reviewed 2 of the 15 claims, seeking compensation for \$112.6 million or 29 per cent of the total asserted value. The Panel has recommended (i) nil award against asserted claim of \$110.8 million for claim no. 5000097 and (ii) compensation of \$1.4 million out of \$1.8 million claimed for UNCC Claim No. 5000059.
3. The audit evaluated if there were adequate controls to ensure compliance with Security Council resolutions, decisions of the Governing Council and if the compensation awarded was appropriate. We test checked the compensability of the claims, the valuation and verification of the asserted losses by UNCC, the supporting evidence submitted by the claimants, and recommendations of the Panel on the compensation to be awarded. We discussed most of our observations with the "E/F" Team and their responses received, till date, are included in this report as appropriate and are identified by the use of italics.
4. In general, OIOS noted that UNCC had established adequate internal controls on processing of the fourth instalment of "E/F" claims. However, there were certain specific issues, which need to be addressed for corrective actions as discussed below:

1 S/AC.26/2002/R.44

## Review of UNCC Claim No. 5000059

5. The claimant, Fonds de Garantie Contre les Actes de Terroisme (Fonds), a French statutory scheme for the compensation of victims of terrorism sought compensation for payments made by it. The claimant exercised its statutory authority and paid individuals who suffered losses, damage or injury as a direct result of Iraq's invasion and occupation of Kuwait. According to statute the claimant is subrogated to the rights of those paid by it and claims before the Commission in that capacity. The claimant's amended claim concerns payments to 320 individuals, in respect of some of whom it has acknowledged partial reimbursement through subrogation. As stated earlier, the Panel has recommended compensation of \$1.4 million against \$1.8 million claimed.

### **Governing Council decision appears to be circumvented**

6. The Governing Council decided<sup>2</sup>:

"... any claimant who has selected a higher amount in Category "A" (UD\$4,000 or US\$8,000) and has also filed a category "B", "C" or "D" claim will be deemed to have selected the corresponding lower amount under category "A".

7. Hence, the claims of the claimants who selected the higher amount in category "A" and also filed claims in category "B", "C" or "D" are processed as having selected the corresponding lower amount (\$2,500 or \$5,000) and compensation awarded accordingly.

8. We noted that a number of victims claimed and were awarded the higher amount in "A" category - but did not submit any other claim to UNCC. However some victims claimed relief from Fonds for other categories. Fonds is now seeking reimbursement of the compensation paid to these victims.

9. The E/F Panel's approach in recommending the claim is that:

"Panel considers that payments made by the claimants pursuant to governmental decrees or decisions are eligible for compensation in the absence of any insurance policy or guarantee, to the extent that the underlying loss would have been eligible had the recipient itself claimed before the Commission. The Panel has recommended an award of compensation to the claimant of no greater amount than the compensation to which individual would have been entitled had the individual filed a claim before the Commission in another category".<sup>3</sup>

10. We believe that if any additional amount is to be compensated for the victims, who have already availed themselves of the higher amount in category "A" from UNCC, the victims should be deemed to have selected the corresponding lower amount in category "A", in accordance with the decision of the GC. If this approach is not adopted it would result in a discrepancy between the victims who selected the higher amount but submitted claims in categories "B", "C" or "D" and those who selected the higher amount but claimed from Fonds.

11. Hence the net amount compensable to Fonds should be the difference between the amount now considered compensable and the deduction on account of deemed selection of the lower amount in category "A".

12. Since there are a number of victims who have claimed the higher amount - the deduction on this account could be substantial. Our review revealed that of the 320 victims for which the claim is now being recommended, 122 victims claimed the higher amount (94 for \$4,000 and 28 for \$8,000).

<sup>2</sup> Decision S/AC.26/Dec.21 (1994)

<sup>3</sup> Paragraph 74 of the Report

In accordance with the GC decision these 122 victims should be deemed to have selected the corresponding loss – and hence \$225,000 should be deducted from the amount now compensable to the claimant.

13. In response to our query UNCC secretariat responded that *"Governing Council decision 21 concerns the situation in which the claimant has filed for the higher amount in category "A" and has also filed a claim in category "A", "B", and "C". That is not the case of the claimant".* They added that *"E/F Panel has not acted inconsistently with decision 21 or the Commission's Rules because decision 21 only applies where the claimant filed another UNCC claim."*

14. Considering the essence of the GC decision, we believe that the higher compensation in "A" category is admissible only to those who do not claim any other compensation from UNCC. However, the GC decision can be bypassed by victims (who claimed the higher amount in category "A") by also claiming amounts from agencies/institutions who in turn could claim in category "E" and "F". Thus in essence UNCC would have to pay compensation on behalf of the victims who already claimed the higher amount in category "A" but are not entitled to the higher amount. This proposed approach is also consistent with the "E/F" Panel's analysis, which states that:

*".....that the Commission cannot award more to Governments that provided relief to others than the recipients of the relief would have been entitled to receive had they filed individual claims".<sup>4</sup>*

It is possible that similar cases may arise in other claims also.

**We recommend that UNCC consider the Fonds claim equivalent to a claim filed by the individual who availed the higher amount in category "A" and also filed claim in category "B", "C" or "D" such that the provisions of Governing Council decision 21 apply (AF2002/27/5/101).**

#### **Total Claim Amount increased after the stipulated deadline**

15. The Governing Council determined that, with the exception of environmental claims, no category "F" claim will be accepted for filing under any circumstances after 1 January 1997 and unsolicited supplements to previously filed claims in category "F" will not be accepted after 11 May 1998<sup>5</sup>. In view of these determinations, the "F1" Panel stated that *"New claims submitted after 1 January 1997 – be they new categories of loss or additional loss elements – are not admissible as they are time barred. Further, information or documentation submitted in response to article 34 notifications, procedural orders or received by way of unsolicited supplements delivered to the Commission after 11 May 1998 cannot increase the amount claimed".<sup>6</sup>*

16. The Claimant had originally filed a "F" category claim for FF 15,663,886.3 in March 1994. In a memorandum attached with the claim, the claimant informed that its costs were provisional since 12 files outstanding of victims suffering after-effects have not yet been consolidated and the total estimated cost is FF 16,942,824.89. The Claimant increased its claim amount to FF 17,168,999.10 in December 1997 and to FF 17,306,039.85 in December 1999. The Fond reduced

<sup>4</sup> Paragraph 74 of the Report

<sup>5</sup> S/AC.26/SR.77, paragraph 14 (c)

<sup>6</sup> S/AC.26/2000/13 paragraph 18

the claim amount by the compensation received, by exercising the subrogation rights, from UNCC and the British Airways and hence the net claim now is for FF 9,366,191.85.

17. As the Governing Council had stipulated 1 January 1997 as a last filing date for claims, it is our view that the claimant cannot increase the total claim amount after that date. Thus the total claim amount should be restricted to FF 16,942,824.89 as intimated before 1 January 1997.

18. We enquired from UNCC if the claimant is permitted to increase the claim amount after the deadline stipulated by the Governing Council. UNCC Secretariat explained that "... *Following the claims review process, the amended claim amount considered by the Panel was FF 9,366,191. This is consistent with the Commission's rules and practice.*"

19. We believe that for the purpose of filing a claim before the last date, it is the 'total claim amount' that should be considered as relevant. If instead, the 'net claim amount' is considered, then the claimant can introduce new losses, even after the stipulated deadline, though the net claim amount may not exceed the original claim amount because of adjustment of compensation received from other sources.

**We recommend that UNCC restrict the total claim amount to FF 16,942,824.89, as intimated by the claimant before 1 January 1997, the deadline stipulated by the Governing Council, and the compensation now admissible be determined by adjusting the compensation already received and that admissible on behalf of the victims. (AF2002/27/5/102)**

#### **Compensation received by Fonds not adjusted**

20. On 07 May 2001 the claimant informed UNCC that it had received a payment of FF 445,503.18 (category "C" award to Mr. Yakhlef Rachid) in execution of its surrogate guardianship. Hence it reduced its claim by this amount and informed that the net claim amount was FF 9,366,190.85 only. We noted that UNCC had not adjusted the sum of FF 445,503.18 from the amount compensable to the claimant.

21. We enquired if this amount had been adjusted. UNCC responded that "*the basis of this calculation was being reviewed with the consultant and the VVSB Officer*".

22. As the claimant has already acknowledged receipt of FF 445,503.18 (\$81,000 approx.) failure to adjust this amount from the compensation now admissible would result in overpayment to the claimant.

23. Our test check also revealed three cases where the amount recommended (as per the spreadsheet prepared by the consultant) exceeded that claimed by the claimant as shown below:

	Amount claimed By Fonds		Amount recommended by UNCC	Difference
	FF	US\$	US\$	US\$
B. Etienne	253,069	44,320	56,891	12,499
M. Michel	58,500	10,636	17,384	6,748
S. Sandrine	82,425	15,044	15,875	831

**We recommend UNCC ensure that:**

- (i) **Compensation already received by the Fonds be adjusted from the net claim amount compensable to it (AF2002/27/5/103); and**
- (ii) **The amount compensable in respect of each victim should not exceed the amount claimed by the Fonds (AF2002/27/5/104).**

**Other issues**

24. Our test check also revealed the following minor issues:

- In two cases (Arnulf Claude & Chenu Carole) UNCC did not appear to have applied the discount, for evidentiary deficiencies, stipulated by the Panel;
- The amount being recommended appeared to exceed the amount claimed by the claimant in one case (Troia Vincent); and
- Though the claimant informed that it had received full compensation on behalf of one victim (Boulos Wadia), however, the claim was still included in the list of compensation sought. UNCC recommended compensation for this claimant.

25. We discussed these issues with UNCC who agreed to review them and inform OIOS accordingly.

**We recommend UNCC ensure that the compensation admissible to Fonds is processed according to the guidelines stipulated by the Panel (AF2002/27/5/105).**

26. The Annex III of the Report and Recommendations made by the Panel of Commissioners concerning the fourth instalment of "E/F" claims reflects that the Medical Examination fees claimed are USD72,725. However it appears the claimant actually submitted a claim for FF 72,725. This may kindly be reviewed.

27. We wish to express our appreciation for the assistance and cooperation extended to the auditor by UNCC.

